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Message Text

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ACTION OPIC-06

INFO OCT-01 ARA-10 ISO-00 EB-07 /024 W
----------142304Z 044682 /60
R 141559Z JAN 77
FM AMCONSUL RIO DE JANEIRO
TO SECSTATE WASHDC 4506
INFO AMEMBASSY BRASILIA
AMCONSUL SAO PAULO

UNCLAS RIO DE JANEIRO 0234

EO 11652: N/A
TAGS: EINV BR
SUBJ: EVALUATION OF TECHNOLOGY TRANSFERS AND CONTRIBUTIONS IN KIND

REF: STATE A-5760

1. THE QUESTIONS POSED BY OPIC IN SUBJ AIRGRAM REQUIRE ANSWERS IN TWO CONTEXTS, INASMUCH AS THE BRAZILIAN REGULATIONS GOVERNING INVESTMENTS, TECHNICAL ASSISTANCE AND TRANSFER OF TECHNOLOGY ARE ENFORCED BY DIFFERENT GOB AGENCIES.

2. ALL FOREIGN INVESTMENTS, LOANS, LICENSING AGREEMENTS, TECHNICAL ASSISTANCE AND TRANSFER OF TECHNOLOGY AGREEMENTS MUST BE REGISTERED WITH THE CENTRAL BANK OF BRAZIL. HOWEVER, PRIOR TO REGISTRATION WITH THE CENTRAL BANK, ONE OF BOTH OF TWO MAJOR AGENCIES (UNDER THE JURISDICTION OF THE MIN OF INDUSTRY AND COMMERCE) MUST APPROVE. THESE AGENCIES ARE: THE INDUSTRIAL DEVELOPMENT COUNCIL (CDI) AND THE NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY (INPI). APPROVAL BY EITHER ONE OR BOTH OF THESE AGENCIES IS REQUIRED FOR ALL CASES EXCEPT DIRECT CASH INVESTMENT IN A BRAZILIAN VENTURE.

3. CDI APPROVAL IS REQUIRED IN THOSE CASES WHERE A DIRECT INVEST-MENT IN AN INDUSTRIAL ENTERPRISE IS ENVISAGED. APPROVAL OF A PROJECT BY THE CDI NORMALLY GRANTS THE INVESTOR A SERIES OF FISCAL INCENTIVES, TO WIT: A) REDUCED IMPORT DUTIES ON EQUIPMENT,
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MACHINERY, APPARATUS AND INSTRUMENTATION, ACCESSORIES AND TOOLS, WITHOUT NATIONAL SIMILAR FOR THE INSTALLATION OR EXPANSION OF MANUFACTURING FACILITIES; B) EXEMPTION OF THE MANUFACTURED PRODUCTS TAX (IPI) ON THE ITEMS MENTIONED IN (A) ABOVE; C) TAX CREDIT IN THE EVENT OF PURCHASE OF NATIONAL EQUIPMENT; D) ACCEL-ERATED DEPRECIATION RATES ON NATIONAL EQUIPMENT; E) PREFERENCE IN FINANCIAL SUPPORT FROM GOVERNMENT LENDING AGENCIES; F) REGISTRATION

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OF THE FOREIGN LOAN OR INVESTMENT WITH THE CENTRAL BANK OF BRAZIL;
G) PRIORITY ON THE PART OF THE CUSTOMS POLICY COUNCIL (CPA) FOR
THE EVENTUAL ASSESSMENT OF HIGHER IMPORT DUTIES ON THE PROPOSED
MANUFACTURED PRODUCT, AS A MEANS FOR FOSTERING AND PROTECTING
THE DOMESTIC INDUSTRY. (THESE INCENTIVES AND THE OTHER ATTRIBUTIONS
OF THE CDI ARE CONTAINED IN DECREE-LAW NO. 1137 AND IN REGULATING
DECREE 67.707, OF 1970). IN ORDER TO RECOMMEND THE AWARD OF THE
ABOVE INCENTIVES, THE CDI THOROUGHLY EXAMINES A PROJECT IN THE
LIGHT OF BOTH THE TECHNICAL AND THE ECONOMIC FEASIBILITY. THE
VARIOUS SECTORIAL GROUPS (SIX) WHICH STUDY, ANALYZE AND EVALUATE
THE FEASIBILITY OF A PROJECT ARE FORMED BY REPS OF GOB AGENCIES
AND TRADE GROUPS. THE SAME STANDARDS ARE APPLIED FOR DIRECT
EQUITY OR OTHER FORMS OF PARTICIPATION. IN EVALUATING PROPOSALS,
CDI'S GENERAL COMPETENCE SEEMS QUITE GOOD.

4. INPI APPROVAL IS REQUIRED IN THOSE CASES WHERE A BRAZILIAN-
BASED FIRM PROPOSES TO ACQUIRE FROM A FOREIGN COMPANY TECHNICAL
ASSISTANCE, TECHNOLOGY, TRADEMARK OR PATENT RIGHTS AND OTHER
INTANGIBLE ASSETS. IN THE CASE OF TECHNICAL ASSISTANCE AND/OR
TECHNOLOGY TRANSFER AGREEMENTS, INPI TECHNICAL EXPERTS CAREFULLY
EVALUATE THE REAL TECHNICAL CONTRIBUTION THAT IS OBTAINED BY THE
BRAZILIAN INDUSTRIAL SECTOR. INPI FREQUENTLY DOES NOT SIMPLY
ACCEPT PROPOSED PRICES OR TERMS FOR SUCH TECHNICAL CONTRIBUTIONS
BY FOREIGN COMPANIES; IN MANY CASES, IT URGES BRAZILIAN PARTNERS
TO RE-NEGOTIATE PRICES AND CONDITIONS. PAYMENT MAY BE LUMP SUM
OR A PERCENTAGE, BUT INPI DOES NOT GENERALLY PERMIT MORE THAN
5 PERCENT AGAINST TOTAL SALES FOR A LIMITED NUMBER OF YEARS. IN
RECENT YEARS, ESPECIALLY IN THE CASE OF THE PETROCHEMICAL
INDUSTRY, INPI HAS BEEN INSTRUMENTAL IN THE SETTING OF A PATTERN
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WHICH IS NOW INVARIABLY APPLIED TO THIS SECTOR: THE FOREIGN HOLDER
OF THE TECHNOLOGY IS INVITED TO ACQUIRE 1/3 EQUITY INTEREST IN THE
BRAZILIAN VENTURE; HIS PARTICIPATION MAY BE IN THE FORM OF
TRANSFER OF TECHNOLOGY ALONE OR IN ASSOCIATION WITH INVESTMENT IN
CASH OR KIND.

5. THE PARAMETERS FOR EVALUATION OF TECHNOLOGY ARE RATHER VAGUE, BUT
INPI LOOKS INTO THE ASPECTS OF REAL CONTRIBUTION TO THE NATIONAL
ECONOMIC/INDUSTRIAL DEVELOPMENT. THE GOB HAS ESTABLISHED CERTAIN
PRIORITY AREAS OF INDUSTRIAL ACTIVITY WHICH RECEIVE GREATER
FACILITATION FROM INPI. AMONG THESE AREAS ARE STEEL, CHEMICAL,
PETROCHEMICAL, HEAVY MACHINERY, PAPER AND CELLULOSE, AND THOSE
INDUSTRIES WHICH AIM AT IMPORT SUBSTITUTION. IF THE FOREIGN
INVESTOR PROPOSES TO EFFECT PART OF HIS INVESTMENT IN KIND
(MACHINERY AND EQUIPMENT), A CAREFUL EVALUATION OF THE MACHINERY
IS MADE. THE GOB HAS ESTABLISHED A RIGID SET OF RULES GOVERNING
THE IMPORTATION OF USED MACHINERY TO ASSURE THAT OBSOLETE
EQUIPMENT IS NOT BROUGHT TO BRAZIL IN THE FORM OF FOREIGN INVEST-
MENT, INCLUDING REQUIREMENTS THAT THE MACHINES MUST BE APPRAISED

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BY EXPERTS, SHOULD NOT BE MORE THAN 5 YEARS OLD (WITH CERTAIN EXCEPTIONS) AND SHOULD CLEARLY MEET THE TECHNICAL AND ECONOMIC PURPOSES FOR WHICH THEY ARE INTENDED. IN MANY INSTANCES, INPI HAS DETERMINED THAT THE USED EQUIPMENT COULD ONLY BE IMPOGTED AT DEPRECIATED VALUE.

6. PER PARA 3 OF REF AIRGRAM, IT SHOULD BE NOTED THAT CDI AND INPI EVALUATIONS ARE INTERNAL DOCUMENTS. WE DOUBT THAT THEY WOULD BE MADE AVAILABLE TO PROVIDE AN INDEPENDENT BASIS FOR OPIC DETERMINATIONS OF INSURANCE COVERAGE. SUBJECT TO ITS OWN CONTROLS AND VERIFICATION, OPIC COULD, OF COURSE, ACCEPT THE INVESTOR'S ACCOUNT OF THE VALUATIONS USED IN PRESENTATIONS TO CDI AND/OR INPI.
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Message Attributes

Automatic Decaptioning: X
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Subject: EVALUATION OF TECHNOLOGY TRANSFERS AND CONTRIBUTIONS IN KIND
TAGS: EINV, BR, OPIC
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